

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 6560 of 1985

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO
2. To be referred to the Reporter or not? : NO
3. Whether Their Lordships wish to see the fair copy of the judgement? : NO
4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO
5. Whether it is to be circulated to the Civil Judge? : NO

CHANDRAKANT CHUNILAL DAVE

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR PC MASTER for Petitioner

MR AM KAPADIA for MR SB VAKIL for Respondent No. 1, 2, 3

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 22/10/1999

ORAL JUDGEMENT

1. As only on short ground this petition deserves to be partly allowed, I do not consider it to be necessary to give all detail facts of the case. The facts are to be given briefly which are necessary for deciding this matter on this point.

2. In 1963, the petitioner joined the services of the Bank as a Clerk. He was promoted to the rank of

Assistant Accountant in the year 1972. At the relevant time, the petitioner was working with the Foreign Exchange Branch of the opponent Bank at Bombay. Hierarchy in the Bank was as under:

Clerk - Assistant Accountant - Officer-in-charge and Manager.

3. At the relevant time in the Branch, Shri H.R. Trivedi was the officer-in charge. Shri B.R. Desai was working as Manager. All the three persons including the petitioner came to be suspended under the order dated 10-12-1976 of the Bank. The Manager of the Bank namely Shri B.R. Desai allowed to retire from the Bank services before issuance of the charge-sheet on the ground that he owed moral responsibility for the loss caused to the Bank. This has been stated by the respondent- Bank in para-10 of the affidavit in reply at page 242 of this petition. The petitioner and the officer-in-charge Mr.Trivedi vide memo dated 5-5-1977 of the Bank were served with the charge-sheets. These two charge-sheets are on the record of this special civil application at page no. 46 and at page no. 246. The charges against both these person are identical and substantially similar. In March, 1979, the suspension order of Mr.Trivedi was revoked by the Bank. It is not in dispute that the Bank decided to hold the joint inquiry against the petitioner and Mr. Trivedi, officer-in-charge of the Branch. However, both the petitioner and Mr. Trivedi have opposed this action of the respondent Bank. This opposition was not accepted by the Bank on the ground that the inquiry against both proceed on the same charges. First date in the inquiry was fixed on 10th January, 1980 i.e. after about three years of the date of service of chargesheets. In the inquiry, the petitioner and his co-delinquent employee Mr. Trivedi made a request for the supply of the documents from time to time. They both requested for the assistance of expert in the inquiry as the subject matter was technical and almost all i.e. the inquiry officer, the petitioner and co-delinquent were not having the experience of the foreign exchange currency. This request of both the delinquent employees came to be rejected. They made a request for the copies of the document to be produced in of the inquiry as the record of the inquiry was very bulky, but this request too has not been accepted. The Bank first started inquiry in the case of Mr. Trivedi and at one stage the witness of the Bank was cross-examined by Mr. Trivedi on 8-10-1980 and last proceeding was held in the case of Mr. Trivedi on 21-10-1980 when the proceedings were adjourned to

24-11-1980. Then thereafter there was no inquiry proceedings. On 4-3-1981, a special inquiry was held in the case of Mr. Trivedi at Bhavnagar though earlier all the proceedings were being conducted at Bombay. The petitioner was not given any notice or information of holding of this inquiry in the case of Mr. Trivedi on 4-3-1981 at Bhavnagar. On 4-3-1981 Shri Trivedi, in the absence of the petitioner, was allowed to confess the charges and he accordingly confessed. The Inquiry Officer on 7-3-1981 submitted the inquiry report in the case of Mr. Trivedi whereunder he held that all the charges are proved against Mr. Trivedi and he recommended that his case may be considered sympathetically. The Bank passed the order on 19-8-1981 in the case of Mr. Trivedi and he was ordered to suffer the penalty of stoppage of three grade increments only. Thereafter nothing was heard by the petitioner till 15-6-1982. On 15-6-1982, the Bank decided to hold the inquiry in the case of the petitioner, leaving apart many things he asked in the proceedings of the inquiry on 15-6-1982 he prayed for the copies of the inquiry proceedings held in the case of Mr. Trivedi. An objection has also been raised how this joint inquiry which has been started at one point of time was sought to be splitted but the documents were not given to the petitioner. Ultimately after completing inquiry against the petitioner, the Bank passed the order of his compulsory retirement. Hence, this special civil application before this Court.

4. Learned counsel for the petitioner contended that the petitioner was subjected to discriminatory and arbitrary treatment vis-a-vis Mr. Trivedi and the Manager of the Branch. Carrying this contention further Shri P.C. Master, learned counsel for the petitioner submits that in the case of Manager, a very senior officer, the Bank has extended favour to him and by simply taking of his statement that he owes more responsibility for whatever happened in the Branch he has been conferred with all the retiral benefits. Shri Master submits that it is a case where the Manager and other Officer though they were equally responsible for all these things but favour as usual what is done in the cases of the officers has been extended to him and the employee lowest in the ladder has been caught. Shri Master next contended that a joint inquiry has been started against the petitioner and Shri Trivedi and on one fine morning it was unilaterally splitted and the inquiry was fixed at Bhavnagar of Mr. Trivedi where the officer's statement has been taken and he was given a nominal penalty of withholding of three grade increments. The petitioner was not informed of this fact nor the

relevant record has been made available. In his submission, the case of the petitioner is not distinguishable in any manner with the case of Mr. Trivedi and when the case of latter the Bank on his confession of the charges felt contended and satisfied by awarding the penalty of withholding of three grade increments but in the case of the petitioner, it has decided to compulsorily retire the petitioner by way of penalty. The cases of the petitioner and Mr. Trivedi are not distinguishable except that in the case of Mr. Trivedi the Bank has acted mala fide. Some godfather of Mr. Trivedi was there in the higher-ups of the Bank what Mr. Master submits and they would have asserted their influence and as a result of their influence this order appears to have been passed. It is a clear case in his submission of arbitrariness and discriminatory treatment. Lastly, Shri Master learned counsel for the petitioner contended that in fact the petitioner has not committed any misconduct but he is subjected to all these chargesheet and harassment only because he was instrument to find out the scandal in the department wherein the highest officers were involved and they would have been compelled to make payment to bank, the petitioner was caught and he was punished. Otherwise also, the Bank has failed to give out what loss has been suffered by it as a result of the misconduct of the petitioner.

5. On the other hand, Shri Kapadia, learned counsel for the respondents supports the action of the Bank.

6. I have given my thoughtful consideration to the submissions made by the learned counsel for the parties.

7. It is really shocking that in the banking companies how the officers are being favoured though they are involved in serious charges of scandals in the Banks. The scandal was there and in connection with this scandal, three persons in hierarchy were taken to be responsible but in the matter of holding the inquiry and ultimately on proved charges to give the penalty, the Bank has clearly exhibited an example of brotherhood and fraternity of the services. It is the say of the people and which appears to be correct that corruption in the country is difficult to control as the officers are being protected by the superior officers. There is a direct chain amongst the offices in the matter of corruption and as a result thereof even if some scandal of corruption is being detected, the higher-ups in the office take care to see that against the lower officers no proceedings are initiated or if the proceedings are initiated then how they can be taken out of these proceedings without

suffering by them any substantial damage. In the present case, in the case of Manager, simply on his statement that he owes his moral responsibility he has been awarded with all retiral benefits otherwise on proof of charges he would not have been entitled for a single pie. In the case of Trivedi, who was equally involved as per the case of the respondent - Bank in the scandal and there were similar charges against him as what is in the case of the petitioner and in this case though the inquiry was started jointly it was splitted for the reasons best known to the respondent and against that person, the inquiry is held at Bhavnagar and there his confession of guilt was recorded and he was ordered to be taken back in service. In the case of the petitioner and the Mr. Trivedi the gravity of charges was equal or should have been taken to be equal against both of them but in the case of Mr. Trivedi his confession has been taken and in these facts though he should have also been removed from the services but he was given nominal penalty of withholding of three grade increments. I fail to see any distinction in the case of the petitioner and that of Mr. Trivedi. If we go by the record of this case, I do not find any distinction in their cases. The petitioner was equally responsible for the said misconduct which has been alleged against two delinquents i.e. he and Mr. Trivedi. Shri Trivedi was favoured by the respondent Bank and as a result of which on the application of his, the order has been passed in his favour by the taking his confession and imposing of the penalty of the withholding of three grade increments. Learned counsel for the respondent has utterly failed to give out any justification in this approach of the Bank in the matter in which three officers from the same Branch are alleged to be involved in this scandal. It is a clear case where in such serious scandal, the officers of the Bank very conveniently saved the manager and the officer-in-charge. In the case of officer-in-charge and the petitioner similar charges were there and joint inquiry had also been started. In these facts, even if whatever stated to be correct by the Bank in the form of charge-sheet then for these all things both Mr. Trivedi and petitioner may be equally responsible. The respondents have failed to give out why they have favoured two persons. This court will not permit the Bank to act in a manner where one of the two delinquent employees go with all retiral benefits and minor penalty. In the absence of any explanation forthcoming from the respondent - Bank, the petitioner also deserves to be given same treatment by this court. Otherwise this litigant will go with the impression belief and consideration that the Courts also ignore all these favouritism, nepotism and mala fide in the Banks.

In the facts of this case, the Bank has failed to make out any case where the penalty of compulsory retirement given to the petitioner could be maintained.

8. As a result of the aforesaid discussion, this special civil application succeeds in part and accordingly the same is allowed. The order of compulsory retirement of the petitioner is substituted by the penalty of withholding of three grade increments without future effect. AS a result of this decision, the petitioner shall be entitled for all the consequential benefits. The Bank is directed to pay Rs. 2000/- as costs of this petition to the petitioner. Rule is made absolute in the aforesaid terms.

zgs/-